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*Attorneys for Plaintiff Twin Peaks Software Inc.*

*Attorneys for Defendant IBM Corporation*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

TWIN PEAKS SOFTWARE INC., a  
California company

Plaintiff,

vs.

IBM CORPORATION, a New York  
corporation,

Defendant.

Case No. 3:14-cv-03933-JST

**STIPULATION & [PROPOSED] ORDER RE:  
DISCOVERY OF ELECTRONICALLY  
STORED INFORMATION FOR PATENT  
LITIGATION**

Upon the stipulation of the parties, the Court ORDERS that responsive electronically  
stored information (“ESI”) will be produced as follows:

1. All documents will be exchanged on discs, by e-mail, or other digital storage  
medium (including but not limited to “zip” files and FTP transfer).

2. The parties will produce ESI as single-page, black and white Group IV .tiff images.  
The ESI shall be produced with production numbers, and appropriate image-based or data “load”  
files, as necessary. The parties shall meet and confer on the appropriate “load” files to accompany

1 their respective document productions. At a minimum, the “load” files must provide the location  
2 and unitization of the .tiff files. Native files of ESI may be produced at the producing party's  
3 discretion when reasonably necessary to make the information contained therein accessible (this  
4 would include, for example, spreadsheets or other data compilations) and upon reasonable request  
5 of the requesting party. To the extent the ESI originally existed in text-searchable format  
6 independent of this litigation, the ESI shall be produced with searchable text.

7 3. The parties will not be required to produce metadata accompanying otherwise  
8 responsive ESI absent a showing of good cause; and the parties are not required to preserve  
9 metadata fields accompanying otherwise responsive ESI that are frequently updated in the  
10 ordinary course of business such as last-opened dates.

11 4. Absent a showing of good cause, voice-mails, instant messages, text messages  
12 (MMS or SMS) as well as mobile devices such as tablets, PDAs, and mobile phones are deemed  
13 not reasonably accessible and need not be collected and preserved.

14 5. General ESI production requests under Federal Rules of Civil Procedure 34 and 45  
15 shall not include email or other forms of electronic correspondence (collectively “email”). To  
16 obtain email parties must propound specific email production requests.

17 6. Email production requests shall only be propounded for specific issues, rather than  
18 general discovery of a product or business.

19 7. Email production requests shall be phased to occur after the parties have exchanged  
20 initial disclosures and basic documentation about the patents, the prior art, the accused  
21 instrumentalities, and the relevant finances.

22 8. Absent a showing of good cause, email production requests shall be limited to five  
23 custodians selected by the requesting party. The email production requests shall identify the  
24 custodian by name for the search of the proposed responsive ESI. Each requesting party shall  
25 limit its e-mail production requests to a total of five search terms per custodian. The search terms  
26 shall be narrowly tailored to particular issues. Indiscriminate terms, such as the producing  
27 company's name or its product name, are inappropriate unless combined with narrowing search  
28 criteria that sufficiently reduce the risk of overproduction. A conjunctive combination of multiple

1 words or phrases (e.g., “computer” and “system”) narrows the search and shall count as a single  
 2 search term. A disjunctive combination of multiple words or phrases (e.g., “computer” or  
 3 “system”) broadens the search, and thus each word or phrase shall count as a separate search term  
 4 unless they are variants of the same word. Use of narrowing search criteria (e.g., “and,” “but not,”  
 5 “w/x”) is encouraged to limit the production.

6 9. Pursuant to Federal Rule of Evidence 502(d), the inadvertent production of a  
 7 privileged or work product protected ESI is not a waiver in the pending case or in any other  
 8 federal or state proceeding. The production of later claimed privileged material within the ESI  
 9 produced in this litigation shall be considered an inadvertent production under Rule 502 and shall  
 10 not itself constitute a waiver for any purpose.

11 10. The parties may jointly agree to modify this limit without the Court’s leave. The  
 12 Court shall consider contested requests for up to five additional custodians per producing party or  
 13 additional search terms, upon showing a distinct need based on the size, complexity, and issues of  
 14 this specific case. Cost-shifting may be considered as part of any such request.

15  
 16 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

17  
 18 DATED: April 28, 2015

Respectfully submitted,

19 HAUSFELD LLP

20 /s/ Bruce Wecker

21 Bruce Wecker

22 *Attorneys for Plaintiff Twin Peaks Software Inc.*

23 DATED: April 28, 2015

Respectfully submitted,

24 QUINN EMANUEL URQUHART &  
 25 SULLIVAN, LLP


26 /s/ Robert W. Stone

27 Robert W. Stone

28 *Attorneys for Defendant IBM Corporation*

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2  
3 **IT IS ORDERED** that the forgoing Agreement is approved.  
4

5 DATED: April 30, 2015  
6

  
THE HONORABLE JON S. TIGAR  
UNITED STATES DISTRICT JUDGE